

## STATE BOARD OF LAND COMMISSIONERS

Philip E. Batt, Governor and President of the Board  
Pete T. Cenarrusa, Secretary of State  
Alan G. Lance, Attorney General  
J. D. Williams, State Controller  
Anne C. Fox, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

### MINUTES REGULAR LAND BOARD MEETING November 23, 1998 9:00 AM

The regular meeting of the Idaho State Board of Land Commissioners was held on November 23, 1998, in Boise, Idaho. The Honorable Philip E. Batt presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa  
Honorable Attorney General Alan G. Lance  
Honorable State Controller J.D. Williams  
Honorable Superintendent of Public Instruction Anne C. Fox

Secretary to the Board Stanley F. Hamilton

### **CONSENT AGENDA**

The following consent agenda was approved, with modifications, upon a motion by Superintendent of Public Instruction Anne C. Fox and seconded by State Controller J.D. Williams. The modification specified that the minutes of July 21, 1998 be corrected to reflect that Superintendent Fox was representing the Land Board in Washington, D.C., testifying on the Admissions Act changes. The motion carried on a vote of 5-0.

1. The following official transactions were approved:

Bureau of Real Estate, Easement Section for September, 1998.  
Timber Sale transactions for the period September 17, 1998 through October 19, 1998  
Bureau of Real Estate, Land Sale Section for September, 1998  
Bureau of Minerals for September 1998  
Bureau of Range Management and Surface Leasing for Cropland, Grazing, Cottage Site,  
Miscellaneous and Submerged Land Leases for the month of September, 1998

2. The following timber sales, staffed by Ron Litz, Chief, Bureau of Forest Management, were approved:

|                        |           |           |
|------------------------|-----------|-----------|
| West Riswold Pole      | CR-4-0663 | 370 MBF   |
| Moose Creek Sanitation | CR-4-0688 | 1,370 MBF |

3. The following applications for addition to the qualified bidders list for timber sales, staffed by Ron Litz, Chief, Bureau of Forest Management, were approved:

Pat Petrie  
HCO 2, Box 37Y  
St. Maries, ID 83861

Todd Cleveland  
dba Todd Cleveland Logging  
3833 15<sup>th</sup> Street  
Lewiston, ID 83501

4. The following Land Board Minutes were approved with a modification of the July 21, 1998 minutes. The modification specified that the minutes of July 21, 1998 be corrected to reflect that Superintendent Fox was representing the Land Board in Washington, D.C., testifying on the Admissions Act changes and was unable to be present at the meeting.

Regular Land Board – July 7, 1998  
Special Land Board – July 21, 1998  
Regular Land Board – August 11, 1998  
Regular Land Board – September 8, 1998  
Special Land Board – September 17, 1998  
Regular Land Board – October 2, 1998

## REGULAR AGENDA

5. Director's report - Director Hamilton presented the monthly Director's report that consisted of:

- A. A summary of the fiscal 1999 Principal Fund Balances and Revenue Composition
- B. Historical Principal Fund Growth

Graphs showing:

- A. Dept. of Lands Expenditures by Fund Source -FY 1989 through FY 1999
- B. Dept. of Lands Expenditures in Current Dollars and FY 1989 Dollars
- C. Annual % Change in Spending compared to the Total State Budget (with Soil Conservation)
- D. Annual % Change in Spending compared to the Total State Budget (w/o Soil Conservation)
- E. Dept. of Lands Full Time Equivalent Position History

The report also included the Quarterly Endowment Fund Report.

Governor Batt said in reviewing the budget, he noted that the department requested a very modest increase. He congratulated the Director, the department and the Land Board for their conservative attitude and good sound management.

6. Metalliferous and non-metalliferous mineral royalty schedule - Presented by Scott Nichols, Bureau Chief of Minerals

Scott Nichols presented the background information for this agenda item, which requested modification of the royalty schedule for metalliferous and non-metalliferous minerals. Mr. Nichols stated that there were no current producing metalliferous leases at this time.

In 1997 the department received a metalliferous mineral lease application from Silver Butte Mining Co. Prior to issuance of the lease it became apparent that the existing royalty rates could be economically cost prohibitive. A review was done on other western states' royalty rates. The review showed that the proposed 5% was within the range applied by other western states. Based on this review, the mineral lease was issued with a royalty rate of five (5) percent of gross receipts.

Attorney General Lance asked if existing leases would be placed at 5%. Mr. Nichols stated that only new leases or leases which are renewed would be modified to 5%.

Superintendent Fox asked if this was based on gross receipts. Mr. Nichols said that was correct. She asked if the other western states were based on net or gross receipts. He stated that all states were based on gross receipts, as this was a comparative review. He did say that he would check with the mineral leasing specialist.

The recommendation of the department was to approve the proposed royalty schedule for new metalliferous and non-metalliferous mineral leases and also for eight existing mineral leases issued under royalty rate during 1997 and 1998.

On September 21, 1998, the bureau sent a letter to the metalliferous mineral lessees explaining the proposed royalty modification and requested comments. No objections were received by the department.

The motion was made by State Controller Williams and seconded by Secretary of State Cenarrusa to approve the recommendation of the department. The motion carried on a vote of 5-0.

7. Request for final approval of Capitol Park Plaza land exchange - Presented by Perry Whittaker, Chief, Bureau of Real Estate

Perry Whittaker provided the background information for this agenda item. The State Board of Land Commissioners gave the department conceptual approval (authorization to proceed) on February 10, 1998, to initiate an exchange involving commercial real estate in downtown Boise currently owned by the law firm of Eberle, Berlin, Kading, Turnbow and McKlveen.

The exchange proposal includes a variety of state owned lakefront and non-lakefront lots at Payette Lake. The exchange is proposed for completion in two (2) phases with two (2) separate closings. This will allow Eberle Berlin necessary time to relocate current residents, demolish and dispose of existing buildings on one parcel.

Attorney General Lance asked why the closing was being done in two separate closings. Kent Nelson, Deputy Attorney General said it was the department's idea in order to make sure that all issues are taken care of by Eberle Berlin before title passing. Attorney General Lance asked if this could be accomplished in one closing with conditions subsequent with liquidated damages. Mr. Nelson said we could, however there are some insurance concerns that arise specifically with respect to insurable interests, with respect to liability insurance on the property if it will continue for some time as residential. The state would find itself in a position of owning that residential property. Although the property was clean on the environmental inspection report, the potential is there that a problem could come up. It was thought to be better to split this into two closings and make sure that property is ready to be exchanged. Mr. Nelson said if something did develop, phase I could stand on its own.

Attorney General Lance asked if there were any mechanism that any adjustment will be done for the beneficiaries. Director Hamilton said this would be proportioned on the state lands that will be given up. Secretary of State Cenarrusa asked if the rent was \$227,000 per year for the office building. Mr. Nelson stated that the annual rent under the master lease, which is approximately 2 ½ years, will be \$227,000 for both of the office holdings.

Mr. Nelson explained the master lease to the Land Board. He said the master lease concept is designed to create a transition period between private ownership of that building and the state ownership of the building. It was a condition of both the state and Eberle Berlin in order to put this transaction together. Once the exchange takes place, the state will take the property subject to the master lease – the state will become the master lessor – Eberle Berlin will be the master lessee. They will be responsible for operating the building during the time of the master lease. They will collect the rents from the tenants, they are responsible to the state for that annual figure. All operating expenses will be borne by them. This allows a transition for Eberle Berlin and the tenants of that office but for the State and the Department of Lands transition into ownership of an office building and the management techniques and requirements that would have.

State Controller Williams stated that he feels this is a win/win situation for the state. Secretary of State Cenarrusa said there will probably be some sporadic objection to the state getting into commercial leasing, however, he said he feels this is complying with the State Constitution in maximizing the long-term financial gain. Attorney General Lance said he may have a different attitude if this property were in a distant area, however this is a part of the Capitol Mall complex. He said he felt this was a unique situation by virtue of the location.

The recommendation of the department recommended Land Board approval to complete this two (2) phase exchange with Eberle Berlin with two (2) separate closings. As part of the exchange, the department requested permission to acquire the property subject to a master lease with Eberle Berlin for the Phase 1 property.

Dr. William D. Forney was present to protest the appraisal of his property. Dr. Forney's lake front lot is currently scheduled for exchange in Phase 1 of the exchange. As the Cottage Site Sub-committee meeting was to be held at 1:00 p.m., it was decided to continue discussion of Dr. Forney's protest at that meeting.

The motion was made by Superintendent Fox and seconded by State Controller Williams to accept the recommendation of the department. The motion carried on a vote of 5-0.

8. Request for conceptual approval to initiate Perrine Bridge land exchange - Presented by Perry Whittaker, Chief, Bureau of Real Estate

Perry Whittaker provided the background for this agenda item, which requested conceptual approval to initiate an exchange with the Bureau of Land Management for the state-owned Perrine Bridge block.

Mr. Roy Prescott, Jerome County Commissioner was present to address the Land Board in regard to this exchange. He provided background information between Jerome County and the BLM on this property. The local community wants to be responsible for the areas they feel they have a major concerned interest in. Jerome County does not have the means or expertise to look at a park situation. They have an agreement with the South Central Idaho Tourism and Recreation Association to look at the process. Jerome County has support from all the local agencies. They are also gleaned support from the Idaho Cattle Association. The idea behind this is to use livestock as a tool for the management of fire suppression etc.

Twin Falls City draws about 72 to 74 percent of their potable water from the north side. All of that water comes through the region being discussed. They have told Jerome County that they have to maintain some degree of certainty that that aquifer will be protected.

Mr. Prescott asked the Land Board to give conceptual approval to proceed with this exchange.

Attorney General Lance asked Mr. Prescott if the Department of Parks and Recreation expressed an interest in this, Jerome County would not want them to participate. Mr. Prescott said they would welcome input from Parks and Recreation because of their expertise, however, Jerome County is really looking for local responsibility and control of the issues that are there.

BLM indicated a willingness to work with the state to identify BLM land, which could be exchanged to the state, however, at this time the agencies have not been able to identify mutually acceptable federal land to include in this exchange. After the land has been identified, the proposal will then be brought back to the Land Board for its review.

The recommendation of the department requested Land Board conceptual approval to work with the BLM to initiate an exchange wherein the State will dispose of the Perrine Bridge parcel.

Attorney General said he would vote for conceptual approval. He stated that he sees future income from this particular parcel of land and expressed that he was not sure exchanging for more grazing/desert land would get the state anywhere. He stated he would not give final approval until he knew what lands were being exchanged.

The motion was made by State Controller J.D. Williams and seconded by Secretary of State Cenarrusa to accept the recommendation of the department. The motion carried on a vote of 5-0.

Superintendent Fox and Attorney General Lance were excused from the meeting at 10:40 a.m.

9. Request for reconsideration of qualified applicant status – O.L. Dudley – expiring grazing lease #G-6597 - Presented by Tracy Behrens, Range Management Specialist

Tracy Behrens provided the background information for this agenda item, which requested reconsideration of qualified applicant status for Mr. O.L. Dudley's expiring grazing lease #G-6597.

At the September 8, 1998 meeting, the Board determined that the application from Roger Lewis should be accepted and that Mr. Lewis was a qualified applicant for both the unit north of the Boise River and the unit south of the River.

The Board determined that Mr. Dudley's application should be accepted for the portion of the state parcel located north of the Boise River, but should not be accepted for the portion south of the river. On September 30, 1998, Mrs. Dudley submitted a letter requesting that the Board reconsider their decision concerning their application for lease G-6597. This request states that the Dudleys have now acquired legal access to the state unit south of the Boise River and that they now have the ability to graze their livestock on the property.

Mr. Behrens quoted the guideline that would be applicable to this situation. "Prior to reconsideration of any previous decision concerning the same person, entity or issue, the Board will first determine whether there is an error in law, changed circumstances or new evidence sufficient to justify reconsideration. If a Board member requests reconsideration, that member must have been on the prevailing side in the prior decision". Mr. Behrens stated there has been a slight change in the circumstance surrounding the application based on the ability to access and use the property.

Having voted on the prevailing side, a motion for reconsideration was made by Secretary of State Cenarrusa and seconded by State Controller Williams. The motion carried on a vote of 3-0 with Superintendent Fox and Attorney General Lance being absent.

Governor Batt was excused from the meeting at 11:00 a.m.

Superintendent Fox returned to the meeting at 11:20 a.m.

State Controller Williams noted that the department had not made a recommendation on this issue. He stated that it would be appropriate for the department to make a recommendation to the Land Board as to how to proceed. Mr. Behrens stated that he would defer recommendation to department's legal counsel. He stated there had been so much controversy concerning this issue that he could state some facts, as he sees them, but said he was not prepared to make a recommendation as to the direction the Board should take.

Ms. Balzarini, legal counsel for the department, stated that she was not in a position to make a recommendation in terms of the Board's decision. She said that if the Board were to re-open this matter, her view would be that an entirely new proceeding should take place. She said it sounded to her like there were new individuals potentially involved and new information available. She said to give the Dudleys the lease they are looking for today would certainly set a precedent in terms of other applicants. Ms. Balzarini emphasized that the Board would re-advertise and begin anew - "start from scratch." The Board would not be reconsidering previous applications. There would be a process for new applications to be submitted.

After considerable discussion, this matter was deferred to the December 15, 1998 regular Land Board meeting by unanimous consent with Governor Batt and Attorney General Lance being absent.

The motion was made by Superintendent Fox and seconded by State Controller Williams to resolve into Executive Session. The motion carried on a vote of 3-0 with Governor Batt and Attorney General Lance being absent.

## **EXECUTIVE SESSION**

10. Dupont v. Idaho State Board of Land Commissioners, Kootenai County Case No. CV-93-97574 pursuant to Idaho Code § 67-2345(1)(f) - Presented by Stephanie A. Balzarini, Deputy Attorney General
11. Idaho Watersheds Project v. State of Idaho, (Challenge to HJR6), pursuant to Idaho Code § 67-2345(1)(f) - Presented by Clive Strong, Deputy Attorney General, Natural Resources Division

The Land Board returned to regular session at 12:40 p.m.

## **RETURN TO REGULAR AGENDA**

Director Hamilton stated that agenda items 10 and 11 were discussed during Executive Session. .

On agenda item 10, the Board discussed the situation in which the decision of the court is being remanded back to the Board. Discussion centered around the fact that the Board has asked legal counsel to consult with the City of Coeur d'Alene and to consult with them as to what their course of action is going to be on this issue. Legal counsel will report back to the Board at the December 15, 1998 meeting.

On agenda item 11, the Board has no action.

12. Encroachment permit applications East and West Lakeshore Drive in Coeur d'Alene - Presented by Jay Biladeau, Assistant Director, Lands, Minerals and Range and Stephanie A. Balzarini, Deputy Attorney General

Jay Biladeau presented the background information for this agenda item regarding applications for encroachment permits on the East and West Lakeshore Drives along Coeur d'Alene Lake.

Mr. Biladeau passed out a letter to the Land Board from John Magnusson, who represents Mr. Beck, Ms. Almgren and Mr. Simpson in this issue.

The department has received four applications at this time for dock permits for docks on East and West Lakeshore Drive. These applications were received after the District Court's decision



in the Dupont case. The applicants are: Donald Beck, Beatrice Almgren, Jim Simpson and Richard Lindberg.

The department has determined that during the pendency of the Dupont litigation, no applications for docks on West or East Lakeshore Drive shall be processed. This is due to the identical or similar factual and legal circumstances associated with all dock applications at these locations. The department has, therefore, returned application fees to applicants and "held" their applications pending the outcome in the Dupont case.

The recommendation of the department is to continue staying or holding all applications on East and West Lakeshore Drives that are in areas affected by city boating and swimming ordinances until all litigation with the Dupont dock application is concluded.

The motion was made by State Controller J.D. Williams and seconded by Superintendent Fox to accept the recommendation of the department. The motion carried on a vote of 3-0 with Governor Batt and Attorney General Lance being absent.

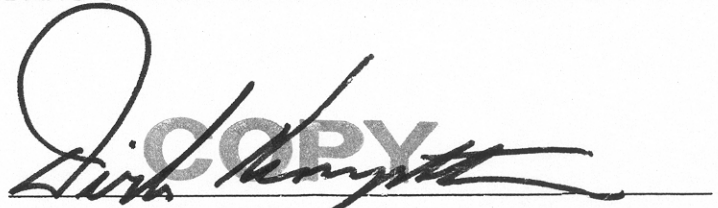
## INFORMATION AGENDA

Director Hamilton briefly discussed the items on the information agenda.

13. Timber sale activity report
14. Stibnite Mine Reclamation update
15. Interest rate update
16. Triumph Mine update
17. Fire Season update
18. Gypsy moth update
19. Charles Meissner, Jr. grazing trespass update
20. Flat Top Butte - Michael D. Dahmer – court decree

There being no further business to come before the Board, the meeting adjourned at 1:00 p.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

A large, stylized handwritten signature in black ink, appearing to read "David H. Hamilton", is written over a horizontal line. A large, semi-transparent "COPY" watermark is visible behind the signature.

President, State Board of Land Commissioners and  
Governor of the State of Idaho



*Pete T. Cenarrusa*  
**COPY**

Pete T. Cenarrusa  
Secretary of State



*Stanley F. Hamilton*  
**COPY**

Stanley F. Hamilton  
Director